

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-0438V

E-Filed: February 7, 2013

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KEVIN TOCK and TRACY TOCK,
parents and natural guardians of a minor
child, BRYCE TOCK,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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UNPUBLISHED

Chief Special Master
Campbell-Smith

MMR Vaccine; Table Encephalopathy;
Joint Stipulation Regarding Attorney's
Fees and Costs

ATTORNEY'S FEES AND COSTS DECISION¹

On November 13, 2003, petitioners filed a claim for compensation on behalf of their son, Bryce, in the National Vaccine Injury Compensation Program ("the Program"). Petitioners allege that Bryce suffered from an MMR vaccine Table presumptive injury of encephalopathy which eventually manifested as a chronic encephalopathy. Petitioners

¹ Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this ruling on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

sought an award under the National Vaccine Injury Compensation Program² (“Vaccine Program”). 42 U.S.C. §§ 300aa-1 to -34 (2006). On November 5, 2009, respondent filed a Rule 4(c) report conceding that Bryce had suffered a MMR Table injury of encephalopathy.³ The undersigned issued a decision in this case awarding damages to petitioners on December 27, 2012.⁴

On February 6, 2013, respondent filed a stipulation in regards to attorney’s fees and costs signed by both parties. The parties stipulated that petitioners counsel should receive the following compensation:

- \$58,129.80, made payable jointly to petitioners and petitioners’ attorney, Scott B. Taylor, for attorneys’ fees and costs;

Additionally, the parties stipulated that petitioners were entitled to the following costs:

- \$1,000.00, made payable to petitioners for costs that they personally incurred in proceeding on this petition. In accordance with General Order No. 9, petitioners filed a fully executed statement indicating that they incurred \$1,000.00 in personal costs pursuing this claim on January 22, 2013.

The undersigned approves the requested amount for attorneys’ fees and costs as reasonable.⁵ Accordingly, an award should be made in the form of a check payable jointly to petitioners and their attorney Scott B. Taylor, in the amount of \$58,129.80.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”).

³ Pursuant to the Vaccine Act, petitioners may establish entitlement to compensation by establishing that petitioner suffered an injury or condition set forth in the Vaccine Injury Table within the requisite Table time period. In this instance, causation is presumed. See 42 U.S.C. § 300aa-14 and 42 C.F.R. § 100.3

⁴ The undersigned originally issued a decision in this case on December 14, 2012, awarding damages as laid out in a proffer submitted by the respondent and agreed to by the petitioners. Judgment entered on December 18, 2012. On December 20, 2012, the parties filed a joint motion for relief from judgment indicating that an error had been made in calculating the total amount to be compensated to petitioners. The undersigned issued an order granting the parties’ request for relief on December 27, 2012.

⁵ The Vaccine Act permits an award of reasonable attorneys’ fees and costs. 42 U.S.C. § 300 aa-15(e).

Additionally, a second check for the amount of \$1,000.00 should be made out to petitioners alone, representing the personal costs they incurred according to their General Order No. 9 statement.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.⁶

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia Campbell-Smith
Special Master

⁶ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

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 Respondent.

It is hereby stipulated by and between the parties, the following facts concerning the above-captioned matter:

- 1

counsel for petitioners that respondent will not object to petitioners' request for \$59,129.80 for final attorneys' fees and costs.

7. Nothing in this Stipulation of Facts Regarding Attorneys' Fees and Costs, including the amount set forth in paragraph 4, should be construed as an admission, concession, or waiver by either party as to any of the matters raised by petitioner's request for attorneys' fees and costs, including, but not limited to, the hourly rates requested, the number of hours requested, and other litigation-related costs.

Respectfully submitted,

s/ Melonie J. McCall
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Dated: February 6, 2013